

JAN 24 2013

SENATE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY
TO ADVISE THE SPECIAL ACTION TEAM ON THE OPTIMAL NUMBER OF
FORENSIC EXAMINATIONS NECESSARY FOR FELONY CASES.

1 WHEREAS, on July 17, 2012 the Governor convened a Special
2 Action Team comprised of representatives from the Governor's
3 Office, adult mental health division of the department of
4 health, the department of public safety, the department of human
5 services, the department of the attorney general, the offices of
6 the prosecutors from each county, the office of the public
7 defender, and the chiefs of police from each county, to examine
8 ways to strengthen inter-governmental and inter-agency
9 collaboration pertaining to the adult mental health system and
10 to more effectively manage the census of Hawaii State Hospital;
11 and
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13 WHEREAS, The Legal/Judicial Subcommittee of the Special
14 Action Team identified that, unlike most states, Hawaii
15 routinely uses three forensic examinations for each individual
16 charged with a felony and committed pursuant to chapter 704 of
17 the Hawaii Revised Statutes. The special action team agreed
18 that a neutral third party, namely the Legislative Reference
19 Bureau shall review the National Model for Competency Best
20 Practices Model at the website www.mentalcompetency.org; and
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22 WHEREAS, many others states use a single forensic examiner
23 in similar circumstances;
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25 WHEREAS, Hawaii's use of three forensic examiners in felony
26 cases is compounded by repetitive examinations at each stage of
27 the court case (at fitness, determining criminal
28 responsibility), to transition out of the hospital, to be placed
29 on conditional release, and to be discharged from conditional
30 release, and

31 WHEREAS, the multiple and repetitive use of three examiners at
32 every step in the proceedings results in substantial delays and

1 extensions of hospitalization without obvious clinical value and
2 at significant public expense; and
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4 WHEREAS, the Special Action Team reached consensus
5 agreement that it was desirable to have a study of Hawaii's use
6 of three forensic examinations, conducted by the Legislative
7 Reference Bureau, to result in the creation of a report to
8 advise and inform the Governor, the Legislature, the Special
9 Action Team, and other key stakeholders regarding the advantages
10 and disadvantages of the current statutory requirements,
11 including costs, and potential advantages and disadvantages of
12 alternative statutory language more aligned with that of other
13 states;
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15 BE IT RESOLVED that the Legislative Reference Bureau, is
16 requested to conduct a study to advise the Special Action Team
17 on the optimal number of forensic examinations necessary for
18 each individual committed to the Hawaii State Hospital who is
19 charged with a felony, relative to the practices in other states
20 and jurisdictions; and
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22 BE IT FURTHER RESOLVED that the Legislative Reference
23 Bureau shall consult with critical stakeholders in studying this
24 issues and providing its report; and
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26 BE IT FURTHER RESOLVED that the Legislative Reference
27 Bureau will complete its study and makes its report no later
28 than twenty days prior to the convening of the regular session
29 of 2014.
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31 BE IT FURTHER RESOLVED that certified copies of this
32 Concurrent Resolution be transmitted to the Legislative
33 Reference Bureau, the office of the governor, the director of
34 health, the director of human services, the director of public
35 safety, the attorney general, the director of human resources
36 development, the offices of the prosecutors from each county,
37 the office of the public defender, the mayors of each county,
38 and the chiefs of police from each county.
39

40
41 OFFERED BY: 
42

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY TO ADVISE THE SPECIAL ACTION TEAM ON THE OPTIMAL NUMBER OF FORENSIC EXAMINATIONS NECESSARY FOR FELONY CASES.

PURPOSE: The Governor's Special Action Team was tasked to strengthen inter-governmental & inter-agency collaboration pertaining to the adult mental health community system and to more effectively manage the census of the Hawaii State Hospital. During the Special Action Team's work, a recommendation was made to adopt the National Model for Competency Evaluations. However, that recommendation did not achieve consensus. However, the Special Action Team is in agreement to request that a neutral third party, namely the Legislative Reference Bureau, conduct a review of this issue and advise the Special Action Team to the optimal number of forensic examinations necessary and appropriate for these cases.

Specifically the Special Action Team requests advisement on the appropriate number of examinations required in case of individuals charged with a felony and raising an insanity plea as a defense, as provided under chapter 704, Hawaii Revised Statutes.

MEANS: Adoption of the proposed concurrent resolution.

JUSTIFICATION: The Special Action Team, comprised of members from the adult mental health division of the department of health, the department of public safety, the department of human services, the department of the attorney general, the offices of the prosecutors for each county, the office of

the public defender, the chiefs of police for each county, and the Governor's office, is planning to strengthen inter-governmental and inter-agency collaboration pertaining to the adult mental health system so as to more effectively manage the census of the Hawaii State Hospital.

Currently Hawaii Revised Statutes, chapter 704 requires the use of three forensic examiners in felony cases when an insanity defense is raised. One forensic examiner is required in non-felony cases. The large number of examinations required results in inefficiencies and delays in resolving cases. This is compounded by Hawaii's use of repetitive exams at each stage of the court case: at fitness determinations, determining criminal responsibility, requests to transition out of the hospital, petitions to be placed on conditional release, and petitions to be discharged from conditional release. The multiple, repetitive uses of three forensic examinations creates substantial delays and extensions of hospitalization without clinical value and the costs of such examinations are tremendous. Substantial savings may be realized if individuals charged with felonies can be placed in settings other than the HSH.

Impact on the public: More efficient use of the state funds without compromising public safety.

Impact on the department and other agencies: A study conducted by Legislative Reference Bureau can advise the Special Action Team on the optimal number of forensic examinations needed for those charged with felonies and placed in the HSH, and can provide the advantages and disadvantages of alternative arrangements similar to those of other states for individuals charged with a felony other than to remain in custody within a state hospital. With the advisement from

the LRB study, affected agencies may implement policies which will result in better coordination between agencies and realize cost savings.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 495.

OTHER AFFECTED
AGENCIES: Judiciary, City and County of Honolulu;
County Prosecutors; Department of the
Attorney General; Department of Public
Safety; Office of the Public Defender;
Department of Human Services, Chiefs of
Police from each county.

EFFECTIVE DATE: Upon approval.